IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9068 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGNAYAK @ FUJI BAIJNATH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 08/12/2000

ORAL JUDGEMENT

#. The petitioner herein by way of this petition under Article 226 of the Constitution has challenged his order of detention passed by the Commissioner of Police, Ahmedabad City , Ahmedabad on 31.7.2000 in exercise of the powers conferred upon him under section 3(1) of the

Gujarat Prevention of Anti social Activities Act 1985 (PASA Act for short). The petitioner came to be detained in pursuance of the above order from 1.8.2000.

#. The grounds denote that 2 crimes before the DCB Police Station, Ahmedbad City were registered against the petitioner on 27.7.2000 and 28.7.2000 under section 66(1)(b), 65(a)(e),81 and 83 of the Bombay Prohibition Act. The detaining authority took into consideration the materials of investigation in the above said two crimes . From the above materials, the detaining authority came to the conclusion that the petitioner was dealing in illegal liquor and was an obstruction to public order and public health. In addition to this the detaining authority also took into consideration the statements of two witnesses who narrated the incidents of 2.7.2000 and 25.6.2000 respectively on assurance of anonymity before the concerned authority. According to this statements, the witnesses were beaten by the petitioner on suspicion that the witnesses were providing information to the police. It is further stated in the statement that public order was disturbed by the incidents of 2.7.2000 and 25.6.2000. From the above material the detaining authority reached to the subjective satisfaction that the petitioner was a bootlegger within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Mr. H.R.Prajapati for the petitioner and Mr. Uday Bhatt AGP for the respondents were heard.

#. Various grounds were urged on behalf of the petitioner against the detention order. Attention of this court was drawn to the representation of the detenu made to the Police Commissioner, Ahmedabad City, Ahmedabad copy of which is placed on record at Annexure.C. This representation was preferred on 11.8.2000 which was in turn forwarded to the Government and the Government rejected the representation. In the representation the petitioner had asked for certain copy of the documents and these documents are the statements of police witnesses in Crime Registers Nos. 5009 of 2000 and 5010 of 2000. However, till today no such copies are given to the petitioner.

#. The above factual aspect clearly shows that the right of the petitioner to make effective representation which is guaranteed under Article 22(5) of the Constitution of India is jeopradised. The statements asked for have been relied upon by the detaining authority in the grounds of detention and the copies of the same are not supplied to

the petitioner. Therefore, further detention of the detenu is vitiated on this ground alone and the order passed by the detaining authority is required to be set aside.

#. In view of the above discussion the detention order passed by the Commissioner of Police, Ahmedabad City on 31.7.2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. The petitioner - Jagnayak @ Fauji Baijnath Rajput is hereby ordered to be set at liberty forth if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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